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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,199	06/27/2003	James A. Limburg	J-3684	7622
28165	7590	06/29/2004	EXAMINER	
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			TSIDULKO, MARK	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,199

Applicant(s)

LIMBURG ET AL.

Examiner

Mark Tsidulko

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-40 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 15 is/are rejected.
- 7) ☒ Claim(s) 5, 7-14 and 16-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06212004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Meltzer (US 2002/0080601).

Referring to Claims 1 and 2 Meltzer discloses (Fig.2) a device for simulating an open fire including a housing [5] having a base and a sidewall, defining an enclosure, a wall positioned in the enclosure between a light source [2] and a fan [6] and forming an intake chamber (not indicated by number) that has inlet opening [8] being in communication with an ambient air, flow outlet [10] having an opening around (not indicated by number) being in communication with an ambient air and opening and between the intake and flow outlet chambers (not indicated by number).

Referring to Claim 6 Meltzer discloses (Fig.2) a plane of the base extending perpendicularly to a plane of the sidewall.

Referring to Claim 15 Meltzer discloses (Fig.2) a fan positioned in the opening in the wall between the air intake and air outflow chambers in order to draw an air stream from the air intake chamber to the outflow chamber.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meltzer (US 2002/0080601) in view of Lin (US 6,454,425).

Referring to Claims 3, 4 and 11 Meltzer discloses the instant claimed invention except for that a sidewall is removably and frictionally connected to the base.

Lin (Fig.5) discloses a candle simulating device wherein a sidewall [1] is an open ended cylinder, removably and frictionally connected to the circular base [15] (col.2, lines 53-65).

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the device of Meltzer having sidewall removably connected to the base, as taught by Lin in order to simplify assembling and disassembling of the device.

Allowable Subject Matter

Claims 5, 7-10, 12-14, 16-18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

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Referring to Claim 5 the prior art of record fails to show a flameless candle wherein a sidewall is wax covered.

Referring to Claim 7 the prior art of record fails to show a flameless candle wherein a plane of the base extends generally perpendicular to the plane of the wall.

Referring to Claim 8 the prior art of record fails to show a flameless candle wherein a wall includes one end connected to the base.

Referring to Claim 9 the prior art of record fails to show a flameless candle wherein a wall is positioned between the two opposing sides of the base.

Claim 10 is objected as claim depended on claim 9.

Referring to Claim 12 the prior art of record fails to show a flameless candle having a lid covering the air intake and air outflow chambers.

Claims 13 and 14 are objected as claim depended on claim 12.

Referring to Claim 9 the prior art of record fails to show a flameless candle having a wick and a fragrance source positioned in the air stream created by the fan.

Claim 17 is objected as claim depended on claim 16.

Referring to Claim 18 the prior art of record fails to show a flameless candle wherein the wall has another opening and a light source positioned in this opening.

Claim 19-40 are allowed.

The following is an examiner's statement of reasons for allowance:

Referring to Claim 19 the prior art of record fails to show a flameless candle having a wick positioned in the air stream and a wax covered sidewall.

Claims 20-33 are allowed as claims depended on claim 19.

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Referring to Claim 34 the prior art of record fails to show a flameless candle having a wax covered housing and a lid positioned in the opening.

Claims 35-40 are allowed as claims depended on claim 34.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571)272-2384. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.T.
June 21, 2004


ALAN CARIASO
PRIMARY EXAMINER